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Magnetic Specialties, Inc. and District 1, United Steelworkers of America, AFL-CIO-CLC.
Case 8-CA-27854

March 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

Pursuant to a charge filed on November 24, 1995, the General Counsel of the National Labor Relations Board issued a complaint on January 19, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 8-RC-15234. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting an affirmative defense.

On March 1, 1996, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On March 5, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 19, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the bargaining unit improperly included the classification of quality control employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.¹ The Respondent does not offer to

¹In addition to contesting the inclusion of the quality control employees in the voting unit, the Employer also filed various objections to the election in the representation proceeding, including that the quality control employees improperly used their authority to pressure unit employees to vote for the Union, that the Regional Director failed to grant its request to stay the election, and that the Union improperly promised to waive initiation fees for employees who promised to sign membership and authorization cards and vote for the Union in the election. The Employer, however, withdrew the last objection and did not request review of the Regional Director's sup-

adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Ohio corporation with an office and place of business in Marietta, Ohio, has been engaged in the manufacture of extruded and flexible magnets. Annually, the Respondent, in conducting its business operations, sells and ships from its Marietta, Ohio facility goods and materials valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 17, 1995, District 1, United Steelworkers of America, AFL-CIO-CLC was certified on September 27, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time production and maintenance employees employed by the employer at its Marietta, Ohio facility including all truck drivers, shipping department employees, all operators, utility employees, machinists, maintenance employees, quality control technicians, electronic engineer assistant and product specialist, but excluding all office clerical employees, professional employees, confidential secretaries, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

plemental decision overruling the other objections. In these circumstances, the Respondent is precluded under Sec. 102.67(f) of the Board's Rules from raising those objections in the instant proceeding. See *A. Bonfatti & Co.*, 316 NLRB 623 fn. 1 (1995), and cases cited there.

B. Refusal to Bargain

About October 18, 1995, the Union requested the Respondent to bargain and, since October 27, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 27, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Magnetic Specialties, Inc., Marietta, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with District 1, United Steelworkers of America, AFL-CIO-CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part-time production and maintenance employees employed by the employer at its Marietta, Ohio facility including all truck drivers, shipping department employees, all operators, utility employees, machinists, maintenance employees, quality control technicians, electronic engineer assistant and product specialist, but excluding all office clerical employees, professional employees, confidential secretaries, guards and supervisors as defined in the Act.

(b) Post at its facility in Marietta, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 29, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District 1, United Steelworkers of America, AFL-CIO-CLC as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part-time production and maintenance employees employed by us at our Marietta, Ohio facility including all truck drivers, shipping department employees, all operators, utility employees, machinists, maintenance employees, quality control technicians, electronic engineer assistant and product specialist, but excluding all office clerical employees, professional employees, confidential secretaries, guards and supervisors as defined in the Act.

MAGNETIC SPECIALTIES, INC.